IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5358 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHUDHARI RAJESHBHAI BHULABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR AG JOSHI for Petitioner(s) : 1,
MS.M.D. MEHTA, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 3.
MR KIRTIDEV R DAVE for Respondent(s) : 3,
MR RAHUL K DAVE for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 31/07/2006

ORAL JUDGMENT

At the request of the learned advocates for the parties, the matter is taken up for final disposal.

The present is the petition which is filed seeking the relief that order dated 3rd January 2006 passed by respondent no.1-State of Gujarat-Secretary, Food and Civil Supplies Department, a copy of which is at Annexure 'C' in Appeal No.25 of 2005. The authority was pleased to allow the appeal after quashing order dated 7th May 2005 passed by the Collector, Navsari, had alloted the fair price shop to Rajesh Bhulabhai Chaudhari (the present petitioner) at Village “Toralvera', Taluka Chikhali, District Navsari. The authority ordered allotment of fair price shop to respondent no.3-Gavit Chandrakant Natubhai.

2. The learned advocate for the petitioner submitted that the appellate authority, State of Gujarat has committed an error in quashing the order of the Collector dated 7th May 2005 by which the fair price shop was allotted in favour of the petitioner; and allotting the fair price shop to respondent no.3. The learned advocate for the petitioner submitted that it is true that the name of respondent no.3 was at serial no.1 in the merit list and the name of the petitioner was at serial no.3 of the merit list. He

submitted that the Collector had not committed any error in following the recommendations of the District Supply Advisory Committee and allotting the shop to the petitioner, who was at serial no.3 in the merit list.

3. The respondent no.3 herein being aggrieved of the order of the Collector dated 7th May 2005 had preferred appeal before the appellate authority and had prayed for stay. The stay was declined by order dated 12th August 2005. Aggrieved of that the present respondent no.3 had approached this Court by filing Special Civil Application No.19568 of 2005, which was disposed of by order dated 27th September 2005. The Court was pleased to direct the authority to decide the pending appeal within four weeks from the date of receipt of writ of this Court.

4. Pursuant to that direction the appellate authority heard the parties and decided Appeal No.25 of 2005, after considering the facts of the case.

5. It is not in dispute that the offence is

registered at Chikhali Police Station being C.R. No.106 of 2002 for the offence under section 372 of the Indian Penal Code, against the present petitioner who is at serial no.5 in the list of the accused persons. It is also not in dispute that the petitioner had produced only an affidavit to claim the status of the educated unemployed, whereas respondent no.3 herein had produced certificate to that effect. It is also not in dispute that respondent no.3 is in possession of higher educational qualifications than that of the petitioner.

6. It is submitted on behalf of the petitioner that the father of respondent no.3 herein is serving in a cooperative society and draws a salary of Rs.1700/-. This cooperative society is running a fair price shop in the village. Therefore, respondent no.3 is not entitled to have an allotment of fair price shop.

During the submissions, the learned advocate for the petitioner submitted that the fair price shop allotted to the cooperative society be considered

that of the father of the petitioner. Such an innovative argument can be advanced by the learned advocate, at the instructions from his client, but can certainly be not accepted by this Court and hence rejected.

Out of frustration, the learned advocate for the petitioner next argued that the said cooperative society is indulging in blackmarketing and even on that ground the fair price shop should not be allotted to respondent no.3 herein. The same observations which are made about the earlier submission are applicable to this submission also.

The learned advocate for the petitioner next argued that respondent no.3 cannot be said to be a resident of the Village because he is pursuing higher studies and for that he remains out of the village. The learned advocate submitted that on this ground, he-respondent no.3 cannot be considered to be a resident of the village. Possibly, the concept of the petitioner is that instead of pursuing higher studies respondent no.3 should also while away his time and

if possible should accompany the petitioner in getting himself implicated in some criminal case. This Court is not able to appreciate even this submission that because he is pursuing higher studies and is going for that purpose out of the village he cannot be considered to be a resident of the village.

7. The appellate authority has rightly observed that earlier the District Supply Advisory Committee was misguided by the representation made by the petitioner and therefore, in column 14, the District Supply Advisory Committee recorded that, 'as further studies are on and father is serving in a society, the application for allotment of fair price shop is rejected'.

8. The appellate authority after taking into consideration all the relevant material and rival submissions of the parties quashed the allotment made in favour of the petitioner and allotted it to respondent no.3.

Despite putting his best and strenuous efforts, the

learned advocate for the petitioner could not convince this Court that the petition deserves to be allowed and the order passed by the appellate authority is required to be quashed and set aside.

9. In the result this petition fails and the same is dismissed. Rule is discharged. Interim relief granted earlier is vacated forthwith. No order as to cost.

(RAVI R. TRIPATHI, J.)

karim